

FRANK FRANICH

IBLA 80-142

Decided May 21, 1980

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. 3833 (UT).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Assessment Work
-- Federal Land Policy and Management Act of 1976: Recordation of
Affidavit of Assessment Work or Notice of Intention to Hold Mining
Claim -- Federal Land Policy and Management Act of 1976:
Recordation of Mining Claims and Abandonment -- Mining Claims:
Recordation

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 11, 1979, and the service fee therefor is not paid to BLM until Nov. 20, 1979, the recordation date of the notice is Nov. 20, 1979.

2. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining

claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Nov. 20, 1979, is not timely filed.

APPEARANCES: Frank Franich, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Frank Franich appeals from the decision of the Utah State Office, Bureau of Land Management (BLM), dated November 9, 1979, which declared the Bluebird Nos. 1-8 lode mining claims null and void for failure to file on or before October 22, 1979, copies of the official record of location notices for the named claims, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulation, 43 CFR 3833.1-2.

The record shows that on October 11, 1979, Franich submitted to BLM copies of recorded notices of location for the eight claims at issue, as well as a map showing the situs of the claims. No payment of the required service fee of \$5 per claim accompanied these filings. Accordingly, the documents were returned to Franich, who resubmitted them together with a check and notice of appeal. These were received by BLM on November 20, 1979.

[1] Regulation 43 CFR 3833.1-2 requires that for mining claims located prior to October 21, 1976, a copy of the official record of the location notice must be recorded with the proper office of BLM within three years, i.e., on or before October 22, 1979. The Bluebird Nos. 1-3 mining claims were located June 26, 1956, and the Bluebird Nos. 4-8 were located August 28, 1972. Regulation 43 CFR 3833.1-2(d) states that each claim filed with BLM shall be accompanied by a \$5 service fee. This is a mandatory requirement. Without payment of the service fee there is no recordation. As the service fee for the notices of the Bluebird Nos. 1-8 mining claims was not paid until November 20, 1979, it must be held that the date of recordation of these claims with BLM cannot be considered to have occurred earlier than that date. Joe B. Cashman, 43 IBLA 239 (1979).

[2] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice or certificate of location for the claim in the BLM office designated by the Secretary of the Interior within the

3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner, and renders the claim void.

The pertinent regulation, 43 CFR 3833.1-2, is as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands

(a) The owner of an unpatented mining claim * * * located on or before October 21, 1976, on Federal lands * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site under state law. * * *

As appellant did not pay the required service fees until November 20, 1979, appellant cannot be deemed to have filed the documents required by statute and regulation with the proper BLM office on or before October 22, 1979. Such failure to comply must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744 (1976); 43 CFR 3833.4. A notice of location relating to an unpatented mining claim located before October 21, 1976, which is received by a BLM office for recordation on November 20, 1979, is not timely filed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge

